

NTSB Order No. EA-3696

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of October, 1992

Respondent.

Docket SE-12703

The Administrator has appealed from an oral ruling Administrative Law Judge Jimmy N. Coffman made on September 11, 1992, in a case the parties had settled just minutes before a hearing was convened on respondent's appeal from an emergency order of revocation issued by the Administrator.¹ Specifically, the Administrator contends that the law judge, after calling the

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hearing to order so that the terms of the settlement could be stated for the record, erred in granting an opposed, off-the-record request to the effect that the case be converted to one bearing a "John Doe" designation rather than one reflecting respondent's actual name.² Because we conclude that the issue of anonymity was not properly before, and therefore should not have been addressed by, the law judge, we will grant the appeal and reverse the law judge's ruling.³

Although it appears from the briefs that prior to the hearing the law judge participated informally to some degree in the parties' efforts to negotiate a settlement, and that the issue of anonymity was discussed, the administrative record contains no request by the respondent for such treatment, no discussion of the parties' respective positions on the matter, and no exposition by the law judge of his reasons for deciding to give the case "John Doe" status despite his knowledge that the Administrator objected to such treatment. Moreover, there is no suggestion in the record that the settlement agreement the parties reached was in any way tied to a change by the Board in

²A copy of the hearing transcript is attached.

³Our order will also reflect the dismissal of the respondent's appeal, as the law judge neglected to dismiss it on learning that the case had been resolved without necessity for an evidentiary hearing. Nevertheless, to the extent the law judge's recitation of at least some of the details of the parties' settlement and his comments on the record can be viewed as a recognition that no further action by the Board with respect to the respondent's appeal was anticipated, we have treated the law judge's ruling as the functional equivalent of a final, and thus appealable, order.

the caption of the case or that, when the parties announced their consensual resolution, there remained between them any point of contention requiring the law judge's involvement. In our judgment, two conclusions inevitably flow from these circumstances.

The first is that the law judge's ruling on anonymity exceeded the scope of his authority. The fact of the settlement established that the respondent no longer desired to pursue his appeal to the Board from the Administrator's revocation order.⁴

⁴In his order, as amended, the Administrator alleged, among other things, that the respondent had violated sections 91.13(a), 91.105(a), and 67.20(a)(1) of the Federal Aviation Regulations (FAR, 14 C.F.R. Parts 91 and 67), and that he was not eligible to hold an airline transport pilot certificate under FAR section 61.151(b). The basis for these charges were the following allegations:

"2. During the summer of 1988 through the fall of 1989, you provided flight instruction to [a female] student pilot....

3. During said time, you engaged in various sexual acts with [the student pilot] while operating an aircraft on numerous flights.

4. During certain of said flights, you failed to remain at the controls of the aircraft during operation.

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6. On August 9, 1991, you were convicted...of six counts of Rape and Abuse of a Child, no force.

7. On November 29, 1991, you made application for an airman medical certificate.

8. On said application, you listed as explanation for a history of conviction(s) "Indessent (sic) assault-9 Aug 1991."

9. Said statement was fraudulent or intentionally false in that you had been convicted of Rape and Abuse of a Child, no force."

Consequently, the only order the law judge had authority to issue was one dismissing the appeal, thereby effectively terminating the proceeding. See note 3, supra. The second conclusion is that since the parties did not raise or litigate the question on the record before the law judge, it would be inappropriate for the Board to attempt to determine whether the respondent should be accorded anonymity in this proceeding, for such determinations should not be made in the first instance at the appeal stage.⁵

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted,
2. The September 11, 1992 ruling of the law judge granting respondent anonymity is reversed, and
3. The respondent's appeal in Docket SE-12703 is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

(..continued)

The order revoked respondent's airline transport pilot, flight instructor and second class medical certificates.

⁵We nevertheless note, in this connection, the Administrator's essentially correct contention that, for the most part, all of the cases we have decided under a pseudonym involved medical disqualifications. He submits that he "agrees that the public interest is not served by publishing the names of individuals who suffer from medical conditions which disqualify them from certification. However, the public interest is served by publishing the names of individuals who violate the Federal Aviation Regulations. An obvious deterrent effect is gained." Appeal Brief at unnumbered pages 5-6.